

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Russell Dan Smith,)	Civil Action No.: 1:10-2798-CWH
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
Wikimedia Foundations, Inc.,)	
and craigslist, Inc.,)	
)	
Defendants.)	
)	

On September 1, 2010, Russell Dan Smith (the “plaintiff”), filed this pro se action against Wikimedia Foundations, Inc., and craigslist, Inc. (the “defendants”), in the South Carolina Court of Common Pleas for Aiken County. The defendants removed the action to this Court, stating in their Notice of Removal that neither defendant had been served with a summons or a copy of the complaint and that they had obtained a copy of the complaint from the public records of the Court of Common Pleas. No return of service has ever been filed with the Court.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(d), D.S.C., this matter was referred to a United States Magistrate Judge for pre-trial proceedings and a report and recommendation. On March 1, 2011, the magistrate judge issued a report recommending that this matter be dismissed without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, because the defendants were not served within the 120 day period for service. In the report, the magistrate judge advised the plaintiff that he was to provide the Court with proof of service on the defendants, or present good cause to the Court for any failure to serve the defendants, within ten (10) days of the filing of the report. The magistrate judge specifically

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warned the plaintiff that failure to do so may result in the case being dismissed. Furthermore, the magistrate judge stated that if the plaintiff submitted proof of timely service on the defendants, then the report would be vacated, and that the matter would proceed before the magistrate judge. If, however, the plaintiff failed to submit proof of timely service on the defendants, or to demonstrate good cause for having failed to do so, within the requisite ten (10) days, then he would recommend that the matter be dismissed, without prejudice, pursuant to Fed. R. Civ. P. 4(m). (ECF No. 13).

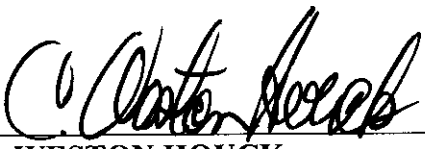
The plaintiff has failed to respond to the magistrate judge's report with the requested information, and the time for doing so has expired. The magistrate judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See Mathews v. Weber, 423 U.S. 261, 271 (1976). The Court is charged with making a de novo determination of any portion of the report of the magistrate judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter to the magistrate judge with instructions. See 28 U.S.C. § 636(b). In the absence of an objection, the Court reviews the report only for clear error. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation") (citation omitted).

After reviewing the record of this matter, the applicable law, and the report and recommendation of the magistrate judge, the Court agrees with the conclusions of the magistrate

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judge. Accordingly, the Court adopts and incorporates the report and recommendation by reference in this Order. The plaintiff's complaint is dismissed without prejudice, pursuant to Fed. R. Civ. P. 4(m).

AND IT IS SO ORDERED.



C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

May 4, 2011
Charleston, South Carolina

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